

COMPLIANCE BOARD OPINION NO. 95-3

July 12, 1995

Ms. Deborah Povich

The Open Meetings Compliance Board has considered your complaint dated April 27, 1995, in which you allege that the Annapolis City Council may have violated the Open Meetings Act in connection with its meeting on April 10, 1995.

As your complaint describes the situation, based on the information available to you at the time, the Annapolis City Council went into closed session near the end of its April 10 meeting to "consult counsel on a specific matter – whether the City may legally create a revenue bond authority without State approval. What is unclear ... is whether or not the Council held a vote in closed session on a different though related topic; whether the full Council should vote on the Revenue Bond Authority Charter amendment before the City Council committees held public hearings and made recommendations on the issue. This issue of voting in closed session is a matter of concern. Did the closed session go beyond the discussion necessary to 'consult with counsel to obtain legal advice?'" Your complaint also indicated concern that minutes related to the April 10 meeting were not available at the time of your complaint, 17 days after the meeting.

In a timely response on behalf of the City, City Attorney Paul Garvey Goetzke enclosed minutes of the April 10 meeting. Subsequently, Mr. Goetzke provided the written statement prepared prior to the closed session. These documents show that the City Council voted unanimously to hold a closed session for the purpose of consulting with counsel to obtain legal advice and with staff, consultants, or other individuals about pending or potential litigation. The minutes further indicate that, with regard to the Revenue Authority matter, the City Attorney "gave a status report." Then a series of motions ensued, one of which was a motion to request an opinion of the Attorney General on the question of whether the City's home rule powers authorize it to create a Revenue Authority. Another motion was to place the proposed charter amendment on the City Council's May agenda. In his response, Mr. Goetzke points out that the latter motion "was determined to be out of order in view of the stated purpose of the closed session and, thus, the Council reconsidered and deleted the offending part of the motion."

With respect to the availability of the minutes, Mr. Goetzke asserts that the Open Meetings Act "almost certainly allows more than 17 days to make public

minutes from closed meetings." He also observes that "the Council could not have made the minutes available sooner than it did except by calling a special meeting for that purpose."

I

The Closing of the Meeting

Before a public body may meet in closed session, it must conduct a public vote at which a majority of members of public body vote in favor of closing the session. §10-508(d)(1) and (2)(i). The Act also requires that the presiding officer "make a written statement for the reason of closing the meeting, including a citation of the authority under the section, and a listing of the topics to be discussed." §10-508(d)(2)(ii). The City Council appears to have adhered to these procedural requirements and therefore did not violate the Open Meetings Act in this regard.

The only applicable exception that would allow a closed discussion about the proposed charter amendment was §10-508(a)(7), allowing closed-door consultation "with counsel to obtain legal advice." When the City Attorney was giving a "status report" about the proposed ordinance, he was evidently providing advice about the City's home rule power, because a motion promptly ensued to seek an opinion of the Attorney General on that point. Such a motion would logically follow the offering of legal advice. Therefore, the Compliance Board concludes that this portion of the discussion about the proposed Revenue Authority was properly closed.

As the Compliance Board has repeatedly pointed out, however, when a meeting is closed on the basis of a particular exception, the discussion must be confined to the boundaries of that exception. *See e.g.*, Compliance Board Opinions 94-7 (August 16, 1994), 94-5 (July 29, 1994), 93-11 (November 30, 1993), and 92-1 (October 15, 1992). In particular, when a public body closes a meeting to obtain legal advice from its counsel, it must reopen the meeting when the discussion turns away from that legal advice to other issues about the topic.

In this instance, it appears that the City Council took a wrong turn when the topic became the scheduling of a vote on the charter amendment. However, it also appears that the presiding officer promptly recognized that this aspect of the discussion of the charter amendment was beyond the scope of the exception that permitted a closed meeting. As the City Attorney indicated in his response, the motion regarding scheduling "was determined to be out of order in view of the stated purpose of the closed session, and thus, the Council reconsidered and deleted the offending part of the motion."

The Compliance Board will not find a violation of the Act when a public body immediately recognizes that a newly raised topic cannot lawfully be discussed in a closed session and does not discuss that topic further. Here, the City Council evidently recognized that it could not properly discuss the scheduling issue in a session that was closed to obtain legal advice, and it refrained from doing so. The Compliance Board finds no violation in this regard.

II

Preparation of Minutes

The Act requires that, "as soon as practicable after a public body meets, it shall have written minutes of its session prepared." §10-509(b). The minutes of a closed session are not generally open to public inspection. §10-509(c)(3)(iii).

One circumstance under which the minutes of a closed meeting may be disclosed is if a majority of the members of a public body vote to do so. §10-509(c)(4)(iii). Presumably, such a vote would ordinarily occur at the next regularly scheduled meeting after the minutes have been prepared by the individual responsible for doing so. That appears to have been the course followed by the City Council in this instance. The Compliance Board finds no violation of the Act with regard to the preparation or disclosure of the minutes of the closed meeting of April 10.

OPEN MEETINGS COMPLIANCE BOARD
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